IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 23.03.2007

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Petition No.40241 of2006
& M.P.Nos.1 /2007 & 1/2006

T.Sri Latha Hari .. Petitioner

Vs.

1.Chennai Metropolitan Development
Authority, rep. by its Member Secretary,
Thalamuthu Natarajan Building, Egmore,
Chennai-600 008.

2.The Commissioner,
Chennai Corporation,
Rippon Building, Chennai-3.

3.A.Abdul Rehaman

4.M/s Pro Tech Structures (P) Ltd.,
rep. by its Managing Director
V.S.Parthasarathy,
having office at Mp.A-3,
Sonrreto Castle, 16/1, Club road,
Chetpet, Chennai-600 031. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Mandamus directing respondents 1 and 2 to demolish the unauthorised construction being carried out by respondents 3 and 4 at door Nos.9 and 10, Danalakshmi Colony, Second Street, Vadapalani, Chennai-26.

For Petitioner : Mr.V.Balakrishnan
For 1st Respondent : Mr.J.Ravindran
For 2nd respondent : Ms.R.K.Kalpana for Mr. L. N. Praghasam
For respondents 3 and 4 : Mr.AR.L.Sundaresan, S.C., for
Mrs.AL.Gandhimathi

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ORDER

(Order of the Court was delivered by P. SATHASIVAM, J.)

The petitioner has filed the above writ petition to issue a Writ of Mandamus directing respondents 1 and 2 to demolish the unauthorised construction being carried out by respondents 3 and 4 at Door Nos.9 and 10, Danalakshmi Colony, Second Street, Vadapalani, Chennai-26.

2. Based on the various averments made in the affidavit filed in support of the above writ petition, we directed the second respondent to submit a report with regard to the grievance expressed by the petitioner.

3. Pursuant to our direction, the Junior Engineer, Division No.129, Corporation of Chennai, filed a report dated 21.03.2007. In the report, it is stated that one N.Velavan, the owner of the building at door Nos.9 and 10, Dhanalakshmi Colony, 2nd Street, Saligramam, Chennai-93, has obtained valid sanctioned plan for the construction of ground + first floor in both the properties vide PPA.No.05686/05 dated 22.08.2005, BA.No.04691/05 dated 19.09.2005 and PPA No.05683/05 dated 22.08.2005 and B.A.No.04690/05 dated 19.09.2005.

4. On the inspection made by the Junior Engineer, the following deviations were found in those properties:

PLOT NO.9:

Side	As per Plan	As per site	Difference
Front	5'	2'6"	(-)2'6"
Back	10'-0'	1'6"	(-)8'6"
East Side	5'	2'3"	(-)2'9"
West Side	5'	--	(-)5'0"

OVER ALL VIOLATIONS:

Sl.No.	Floor	Area as per Plan	As per site	Difference
1	Ground floor	1483.75sq.ft.	1913.75sq.ft.	(+)430 sq.ft
2	First floor	1380.90sq.ft.	1880.90sq.ft	(+)500sq.ft.

PLOT NO.10:

Side	As per Plan	As per site	Difference
Front	5'	2'6"	(-)2'6"
Back	10'-0'	1'6"	(-)8'6"
East Side	5'	--	(-)5'0"

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Side	As per Plan	As per site	Difference
West Side	5'	2'6"	(-)2'6"

OVER ALL VIOLATIONS:

Sl.No.	Floor	Area as per Plan	As per site	Difference
1	Ground floor	1483.75sq.ft.	1913.75sq.ft.	(+)430 sq.ft
2	First floor	1380.90sq.ft.	1880.90sq.ft	(+) 500sq.ft.

5. The report further shows that, on noticing the above deviations, notices under Sections 256(1) and (2) of MCMC Act, 1919 (hereinafter referred to as "the Act") were served on 28.12.2006 to the owner of the building viz., N.Velavan for the properties at Door Nos.9 and 10, Dhanalakshmi Colony, 2nd Street, Saligramam, Chennai-93. The report further shows that notice under Section 256(3) of the Act is under process and further action will be initiated against the deviated portions of both the properties by following due process of law.

6. The third respondent through his Power of Attorney Agent viz., N.Velavan, filed a counter affidavit highlighting his case. Among the details furnished, the averments made in paragraph 12 of the counter affidavit dated 17.02.2006 are relevant. In the said paragraph, the Power of Attorney holder has stated that the construction put up does not cause any hardship to any individual and on account of the interim order dated 19.10.2006, respondents 3 and 4 are unable to complete the finishing work in the building and hand over the same to the respective purchasers. In the same paragraph, the deponent has undertaken that "they will not put any inch of construction in excess of what stands in the building today". In the same paragraph, he sought permission for completion of finishing work in the building as it stands today without any additional construction.

7. In addition to the above details, the very same Power of Attorney holder has filed another counter affidavit dated 23.03.2007, in which he has explained to the deviations pointed out by the Junior Engineer in his report dated 21.03.2007. The following information are relevant.

> "3.I respectfully submit the report shows the side setback on the western side in plot No.9 and on the eastern side in Plot No.10 is nil as against 5 feet to be left as per plans. In this regard, I respectfully submit that Plot Nos.9 and 10 are adjacent to each other and both have been clubbed together and developed and since both Plot Nos.9 and 10 belongs to the same person, the western setback in

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Plot No.9 and the eastern setback in Plot No.10 were left and Plot Nos.9 and 10 have been developed as one single plot. At the same time, I respectfully submit the entire stretch of 5 feet on the western side of the Plot No.9 and on the eastern side of the Plot No.10 have not been constructed upon. Constructions have been made therein over a portion of the place which is shown as setback as per the plan and the remaining portion has been left as vacant.

4.I respectfully submit that no person is prejudiced on account of the construction that has been made in the said area. None of the persons on either side of the property or on the rear side of the property are affected on account of the same, much less the writ petitioner herein.

5. As far as the other deviations are pointed out, I respectfully submit the same are within condonable limits and I may be permitted to approach the Corporation for consideration of the same.

6. I respectfully submit the writ petitioner expressed grievance that sunshades on the rear side of the property have been constructed in such a manner that it is very close to the boundary of his property. I undertake to demolish the protruding sunshade on the rear side of the property in the interest of both."

8. In view of the explanation offered in the counter affidavit dated 23.03.2007 with regard to the construction of building in Plot Nos.9 and 10, which are adjacent to each plot and both have been clubbed together and developed, we permit respondents 3 and 4 to make a proper representation to the second respondent within a period of two weeks from the date of receipt of a copy of this order. On such reply/representation is made, the second respondent either by himself or concerned Officer, who is having power/authority to consider, shall take a decision in one way or the other, in accordance with the statutory provisions, and communicate such decision to respondents 3 and 4 within a period of four weeks thereafter. In view of the undertaking given in paragraphs 3 to 6 in the counter affidavit filed by the third respondent, dated 23.03.2007, respondents 3 and 4 are permitted to remove the protruding sunshade on the rear side of the property. On the basis of the order/decision being taken by the second respondent or his authorised officer, respondents 3 and 4 are permitted to proceed further.

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9. The writ petition is disposed of on the above terms. No costs. Consequently, M.P.Nos.1 /2007 and 1/2006 are closed.

raa

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Member Secretary,
Chennai Metropolitan Development Authority,
No.8, Gandhi Irwin road, Egmore,
Chennai-600 008.

2.The Commissioner,
Corporation of Chennai,
Rippon Building, Chennai-3.

+ 1 cc to Mr. L. N. Pragasam, Advocate SR No. 18705

+ 1 cc to Mr.V. Balakrishnan, Advocate SR No. 18085

AKM(CO)
SR/29.3.2007 W.P.No.40241 of 2006

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